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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,184	02/13/2002	William M. Traut		5310
7590	11/17/2004		EXAMINER	
Dykema Gossett, PLLC Suite 300 West 1300 I Street, N.W. Washington, DC 20005-3306			PHAM, MINH CHAU THI	
			ART UNIT	PAPER NUMBER
			1724	

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/073,184	TRAUT ET AL	
	Examiner Minh-Chau T. Pham	Art Unit 1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 October 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1 and 3-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1 and 3-19 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 3-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over either the French reference (FR 2769850) or Oldham (4,649,677), in view of the German reference (DT 2617364).

The French reference discloses a filter made from activated carbon, received in a conduit (2) which is inserted at a point in the gas venting system of a septic tank. The conduit (2) containing the filter therein is sealingly attached to the septic gas vent piping (see Figs. 1, 4 and 5). Since the filter is contained within conduit (2), the filter is disposed in at least one aperture – the aperture of the conduit. The French reference further discloses a filter made from activated carbon, received in a conduit (2) which is inserted at a point in the gas venting system of a septic tank. The conduit (2) containing the filter therein is sealingly attached to the septic gas vent piping (see Figs. 1, 4 and 5). Since the filter is contained within conduit (2), the filter is disposed in at least one aperture – the aperture of the conduit. Claims 4-6 call for the conduit having different sizes and being misaligned. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the conduit to have different sizes or being misaligned since such modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). Oldham discloses a septic tank (40) with an overhead pipe (46) through which methane gas

transported, pipe (46) connects to the horizontal pipe (see horizontal pipe in Fig. 11 which connects to pipe (46) which then transport the methane gas through filter (48). The filter (48) is contained in the horizontal pipe through which the gas flows so it would meet the disposed in at least one aperture limitation, i.e. the pipe aperture. Claims 1 and 3-19 differ from the disclosure of either the French reference or Oldham in that the aperture is in downward facing position and a fixture mounted on the leg. The German reference discloses a vent for a septic system including a conduit to convey gas with a downward facing aperture (see 3 in Fig. 2) comprising a leg configured to mount on, conceal a portion of and convey gas from the conduit wherein the leg is configured for mounting a fixture thereon. The German reference further discloses the leg closely or sealingly receives the conduit and configured to convey gas from the conduit to the passage, and a fixture mounted on the leg where the fixture is a statue or a garden ornament. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a vent for a septic system with a mounted fixture thereon as taught by the German reference in the conduit of either the French reference or Oldham to provide an artificial landscaping device adapted to fit over the septic system covers or vents and look fully natural to an unsuspecting observer by blending into the landscaping.

Response to Amendment

Applicant's arguments filed on October 22, 2004 have been fully considered but they are not persuasive.

Applicant amends independent claims 1 and 13 to have a downward facing aperture. The Examiner now introduces the French reference and Oldham as the primary references in combination with the German reference under the 103 rejection to show a downward facing aperture in the fixture mounted on the leg (see 3 in Fig. 2) wherein the aperture of the French reference or Oldham can be modified to have a downward facing position, as claimed, since the filter is contained within conduit, the filter is disposed in at least one aperture – the aperture of the conduit and the conduit can have different sizes and being misaligned. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the conduit to have different sizes or being misaligned since such modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Applicant's arguments with respect to claims 1 and 3-19 have been considered but are moot in view of the new ground(s) of rejection as discussed above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Minh-Chau T. Pham whose telephone number is (571) 272-1163. The examiner can normally be reached on Mon/Tues/Thur/Fri 7:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Minh-Chau Pham
Patent Examiner
Art Unit: 1724
November 12, 2004